



U.S. Citizenship  
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FEB 05 2007

FILE: [REDACTED] Office: California Service Center

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a faint circular stamp.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center. The applicant appealed, and the matter was remanded by the Administrative Appeals Office (AAO). The application was then denied by the Director, California Service Center. It is now before the AAO on appeal. The appeal will be dismissed.

The application was initially denied because the applicant did not respond to a notice of intent to deny which had asked that his employer complete a questionnaire regarding the applicant's agricultural duties. On appeal, the applicant furnished the questionnaire that was completed by his employer. Subsequent to the remand, the application was denied because the applicant did not fully assist the director in verifying information concerning criminal charges.

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1(h).

Section 210(h) of the Act, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind *and other perishable commodities*, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. § 1d.6, are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"Field work" means any employment performed on *agricultural lands* for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. 7 C.F.R. § 1d.4.

"Agricultural lands" means any land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work. 7 C.F.R. § 1d.2.

Clearly, nurseries are agricultural land because they are used for the purpose of performing fieldwork in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in fieldwork activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in fieldwork on agricultural land. Conversely, an alien who worked with horticultural specialties as a landscaper on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing fieldwork. While the *purpose* of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

The applicant, on his Form I-700 application, claimed to have planted, maintained and prepared trees, fruit trees, land and flowers for [REDACTED] in Orange County, California for 180 days from March 1985 to May 1985. Mr. [REDACTED] completed a Form I-705 affidavit, which corroborated the applicant's claim. On the affidavit, [REDACTED] showed his address to be [REDACTED]

After the application was filed, an officer of the Immigration and Naturalization Service interviewed the applicant regarding the application. According to the officer, the applicant worked only in landscaping. This information was presumably provided by the applicant at the interview. Later, Mr. [REDACTED] completed and furnished the questionnaire, which provided more information. He reiterated that the applicant worked for him during the period claimed. He also stated that the plants used in his business were purchased from a grower, rather than raised by his employees.

The Director, California Service Center, stated without specificity in his notice of denial that the applicant had established that he had engaged in qualifying employment. However, based on the interviewer's note, the information provided by Mr. [REDACTED], and the lack of any evidence that Mr. [REDACTED] operated a nursery, it is concluded that the applicant worked with horticultural specialties as a landscaper. As stated above, only nursery work with horticultural specialties may qualify an applicant for special agricultural worker status. The applicant has, therefore, failed to establish the performance of at least 90 man-days of *qualifying* agricultural employment during the twelve-month eligibility period ending May 1, 1986, and the director's determination to the contrary is withdrawn.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 210.3(d)(3).

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. 8 C.F.R. § 210.3(b)(3) states all evidence regarding admissibility and eligibility submitted by the applicant for adjustment of status will be subject to verification by the Service. Failure by the applicant to release information may result in the denial of the benefit sought. Additionally, 8 C.F.R. § 210.3(c) states in part: "A complete application for adjustment of status must be accompanied by proof of identity, evidence of qualifying employment, evidence of residence and such evidence of admissibility or eligibility as may be requested by the examining immigration officer in accordance with such requirements specified in this part."

According to a report of the Federal Bureau of Investigation's Criminal Justice Information Services Division, the applicant was arrested for *Driving Under the Influence* on May 21, 1998 in Northlake, Illinois. That report also shows the applicant was arrested for *Driving Under the Influence/Alcohol* and *Endanger Life/Health of Child* on September 30, 2001 in Downer's Grove, Illinois.

The Director, California Service Center directed the applicant to provide the court dispositions of these charges. The applicant then furnished page 5 of an Alcohol and Drug Evaluation Uniform Report, showing the counseling center he was referred to and bearing the applicant's signature on July 13, 1998. While this document may relate to the May 21, 1998 arrest, there is no way to ascertain from a review of page 5 that this is the case. Although it is not clear that the applicant was convicted, the fact that he was referred to a counseling center does not lead to a conclusion that the charges were dismissed or that he was found not guilty.

Regarding the same May 21, 1998 arrest, on appeal the applicant provides a court record dated February 28, 2005, showing that on April 15, 1999 a hearing was held and the judge entered an order that the case was "Terminated, Satisfied". This document, written six years after the court action, does not clearly state whether the applicant had been convicted, or had been diverted into a program without a finding of guilt.

Concerning the September 30, 2001 arrest, the applicant initially furnished only page 7 of a December 29, 2001 report of the Probation and Court Services DUI Evaluation program. Again, it is not clear if this document refers to the September 30, 2001 arrest, and it is not clear that the applicant was convicted. On appeal, the applicant provides a court order dated August 22, 2002, indicating the prosecution's motion to Nolle Pros was granted. However, there is no way to determine that the order relates to the two charges stemming from the September 30, 2001 arrest.

It is not clear that the documents submitted definitely relate to the charges cited by the director. Therefore, the applicant has failed to provide documents necessary for the adjudication of his application. Because of that, and the failure to demonstrate the performance of qualifying employment, the appeal must be dismissed.

**ORDER:** The appeal is dismissed. This notice constitutes a final notice of ineligibility.